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# LEGISLATIVE GUIDE

## *Legal Services Division*



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### About the Author:

This Guide was written by Joseph McEniry, J.D., Creighton University, 1992. Mr. McEniry has been a Legal Counsel for the Legal Services Division of the Legislative Services Agency since 1998. He staffs the Judiciary and Public Safety Committees and the Joint Appropriations Subcommittee on the Justice System, and drafts legislation in the areas of judiciary, corrections, and public safety.

Mr. McEniry can be reached by telephone at (515) 281-3189 or by e-mail at:  
[joseph.mceniry@legis.state.ia.us](mailto:joseph.mceniry@legis.state.ia.us)

Iowa Legislative Services Agency  
State Capitol  
Des Moines, IA 50319

December 2009

## SEX OFFENDER REGISTRY LAW

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## I. Purpose and Overview

The purpose of this Legislative Guide is to provide a general overview of the Sex Offender Registry Law in Iowa, including who is required to register, the duration of registration, the registration process, and the information to be provided and made available. Unless otherwise indicated, references in this Guide to the Iowa Code incorporate both the 2009 Iowa Code and 2009 Iowa Code Supplement.

The Sex Offender Registry was created in 1995.<sup>1</sup> The residency restrictions were added during the 2002 Legislative Session.<sup>2</sup> The registry law was substantially amended during the 2005 Legislative Session.<sup>3</sup> The registry law was substantially amended again during the 2009 Legislative Session.<sup>4</sup> As of November 1, 2009, there were 5,044 offenders on the Sex Offender Registry.<sup>5</sup>

The Iowa Supreme Court has concluded that the Sex Offender Registry is not punitive and thus, when applied retroactively, is not a violation of the ex post facto law.<sup>6</sup>

## II. Offenders Required to Register

Any person convicted of a sex offense in this state or who is required to register in another jurisdiction under the other jurisdiction's sex offender registry is required to register as a sex offender in this state if the offender resides, is employed, or attends school in this state.<sup>7</sup> An offender who is incarcerated is not required to register, but the running of the period of registration is tolled while the offender is incarcerated.<sup>8</sup> Conviction of more than one sex offense prosecuted within a single indictment is considered a single offense for purposes of registration.<sup>9</sup>

## III. Tiers

Each offender convicted of a sex offense is classified as either a tier I, tier II, or tier III offender.<sup>10</sup> The tiers contain sex offenses that are in ascending order of severity; thus a tier I offender has committed a less serious offense than a tier II or tier III offender.<sup>11</sup> The tier classification system determines the frequency of verification of relevant information at the sheriff's office and determines when an offender is eligible to apply for a modification of

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<sup>1</sup> See Iowa Code §§ 692A.1-692A.16. See also 1995 Iowa Acts ch. 146 (S.F. 93).

<sup>2</sup> See 2002 Iowa Acts ch. 1157 (S.F. 2197).

<sup>3</sup> 2005 Iowa Acts ch. 158 (H.F. 619).

<sup>4</sup> 2009 Iowa Acts ch. 119 (S.F. 340).

<sup>5</sup> E-mail from Karin Hamilton, Iowa DPS-DCI-SOR, to Joseph McEniry, LSA (November 2, 2009) (on file with author).

<sup>6</sup> *State v. Pickens*, 558 N.W.2d 396, 400 (Iowa 1997).

<sup>7</sup> Iowa Code § 692A.103(1). Iowa Code § 692A.101(27) defines a "sex offense" to mean an indictable offense for which a conviction has been entered that has an element involving a sexual act, sexual contact, or sexual conduct, and which is enumerated in Iowa Code § 692A.102, and means any comparable offense for which a conviction has been entered under prior law, or any comparable offense for which a conviction has been entered in a federal, military, or foreign court, or another jurisdiction. Two terms within the definition "sex offense" are also defined; see Iowa Code § 692A.101(12) for the definition of "foreign court" and Iowa Code § 692A.101(18) for the definition of "military offense."

<sup>8</sup> Iowa Code § 692A.103(2).

<sup>9</sup> Iowa Code § 692A.102(6).

<sup>10</sup> Iowa Code § 694A.102. See Appendix A for all the sex offenses classified as either tier I, tier II, or tier III offenses.

<sup>11</sup> Iowa Code § 692A.102.



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registration requirements.<sup>12</sup> The tier classification system does not affect the duration of the registration requirement.<sup>13</sup>

An offender classified as a tier I offender is reclassified as a tier II offender if it is determined that the offender has one previous conviction for an offense classified as a tier I offense.<sup>14</sup> An offender classified as a tier II offender is reclassified as a tier III offender if it is determined that the offender has one previous conviction for an offense classified as a tier II offense.<sup>15</sup> Any sex offense which would qualify an offender as a sexually violent predator is classified as a tier III offense.<sup>16</sup> A tier II offense is reclassified as a tier III offense if the victim is 13 years of age or younger.<sup>17</sup>

## IV. Juvenile Registration

### A. Requirement to Register

A juvenile adjudicated delinquent for a sex offense is required to register as a sex offender unless the juvenile court waives the requirement and finds the juvenile should not be required to register.<sup>18</sup> However, if a juvenile 14 years of age or older committed an offense with force or threat of serious violence by rendering the victim unconscious or by involuntary drugging of the victim, the juvenile is required to register as a sex offender.<sup>19</sup> The juvenile registration provisions do not apply to a juvenile prosecuted in adult court.<sup>20</sup>

### B. Exceptions to Juvenile Registration

A juvenile who is required to register may move to modify or suspend the registration requirement if good cause is shown.<sup>21</sup> A juvenile 14 years of age or older who committed an offense with force or threat of serious violence by rendering the victim unconscious or by involuntary drugging of the victim is not eligible to move to modify or suspend the registration requirement.<sup>22</sup> However, if a juvenile offender is required to register in juvenile court, the juvenile court, prior to the termination of the dispositional order, determines whether the juvenile remains on the registry.<sup>23</sup> If an offender remains on the registry after being discharged from juvenile court, the offender may file an application to modify the registration requirements if the offender meets the criteria for modification.<sup>24</sup>

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<sup>12</sup> See Iowa Code § 692A.108 for frequency of verifying relevant information and Iowa Code § 692A.128 for applications to modify registration requirements.

<sup>13</sup> Iowa Code § 692A.106.

<sup>14</sup> Iowa Code § 692A.102(2).

<sup>15</sup> Iowa Code § 692A.102(3).

<sup>16</sup> Iowa Code § 692A.102(4). See Iowa Code § 692A.101(30) for the definition of "sexually violent predator."

<sup>17</sup> Iowa Code § 692A.102(5).

<sup>18</sup> Iowa Code § 692A.103(3). See Iowa Code § 692A.101(27) for the definition of "sex offense."

<sup>19</sup> Iowa Code § 692A.103(4).

<sup>20</sup> See generally Iowa Code § 232.8(1), (3) for jurisdiction of juveniles in adult court and Iowa Code § 692A.103(3)-(6) for registration provisions applicable in juvenile court.

<sup>21</sup> Iowa Code § 692A.103(5).

<sup>22</sup> Iowa Code § 692A.103(4) and (6).

<sup>23</sup> Iowa Code § 232.54(1)(i).

<sup>24</sup> See Iowa Code § 692A.128(6) if the offender is no longer under supervision, the offender shall meet all of the criteria under Iowa Code § 692A.128(2) except the offender is not required to obtain a stipulation from the director of a judicial district department of correctional services, or the director's designee and the Department of Corrections agrees to perform a risk assessment.



## V. Registration Process

### A. Registration

A sex offender is required to appear in person to register with the sheriff of each county where the offender has a residence, maintains employment, or is in attendance as a student, within five business days of being required to register.<sup>25</sup> A county sheriff is also required to accept the registration of any person who is required to register in the county.<sup>26</sup>

An offender who registers is required to provide relevant information, including date of birth, passport and immigration documents, a government-issued driver's license or nonoperator's identification card, a DNA sample, educational institutions attended as a student, employment information, fingerprints, Internet identifiers, nicknames or aliases, palm prints, photographs, physical description, professional licensing information, residences, current address, telephone numbers, temporary lodging information including dates when residing at a temporary place, vehicle information,<sup>27</sup> and the name and date of birth of each person residing in the residence.<sup>28</sup> In addition, if another state requires registration, the offender is required to register in the other state within five business days of establishing a residence, employment, or attendance as a student in the other state.<sup>29</sup>

### B. Notification

There are numerous instances where a change of relevant information triggers a requirement to notify the county sheriff of the particular change. If a sex offender changes residence, employment, or attendance as a student, the offender is required to appear in person to notify the sheriff of each county where a change has occurred within five business days of such a change.<sup>30</sup> If relevant information other than an offender's residence, employment, or attendance as a student changes, the offender is required to notify the sheriff of the county where the principal place of residence is maintained about the change to the relevant information. The Department of Public Safety identifies in rule what constitutes proper notification.<sup>31</sup>

An offender who establishes a residence, employment, or attendance as a student outside the state must, within five business days of establishing such a change, notify the sheriff of the county where the principal place of residence is maintained about the change.<sup>32</sup> If an offender has multiple residences in Iowa, the offender is required to appear in person to notify the sheriff of each county where a residence is maintained of the dates the offender intends to reside at each residence and of the dates the offender will move from one residence to another residence.<sup>33</sup> If the offender is going to be away from the

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<sup>25</sup> Iowa Code § 692A.104(1).

<sup>26</sup> Iowa Code § 692A.104(1).

<sup>27</sup> See Iowa Code § 692A.101(34) for the definition of "vehicle."

<sup>28</sup> See Iowa Code § 692A.101(23)(a) for the definition of "relevant information" and Iowa Code § 692A.104(1) for registration process. The term "relevant information" also includes an offender's criminal history and the statutory citation and text of any sex offense committed by the offender. However, the offender is not obligated to provide such information; see Iowa Code § 692A.101(23)(b).

<sup>29</sup> Iowa Code § 692A.104(5).

<sup>30</sup> Iowa Code § 692A.104(2).

<sup>31</sup> Iowa Code § 692A.104(3). As of November 1, 2009, the Department of Public Safety has not issued its rules regarding what constitutes proper notification.

<sup>32</sup> Iowa Code § 692A.104(5).

<sup>33</sup> Iowa Code § 692A.104(6).



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principal residence for more than five days, the offender must notify, in person, the sheriff of the county where the principal place of residence is maintained, within five days of being away from the principal residence.<sup>34</sup>

## C. Verification

An offender is required to verify relevant information with the county sheriff of the county where an offender's principal place of residence is maintained even if no change to an offender's relevant information has occurred.<sup>35</sup> A tier I offender is required to verify relevant information once a year with the county sheriff.<sup>36</sup> A tier II offender is required to verify relevant information every six months with the county sheriff, and a tier III offender is required to verify information every three months.<sup>37</sup> The verification of information includes allowing the sheriff to photograph the offender where the offender's principal place of residence is maintained.<sup>38</sup>

## VI. Duration of Registration

### A. 10-year Duration

Generally, the duration of registration for an offender is 10 years.<sup>39</sup>

### B. Special Sentence Duration

The duration of registration for an offender who has been sentenced to a special sentence under Code Section 903B.1 (lifetime parole) or Code Section 903B.2 (10-year parole) is for a term equal to the term of the special sentence.<sup>40</sup>

### C. Lifetime Duration

There are four different ways an offender may be required to register for life:

- If an offender commits a special sentence offense that requires lifetime parole under Code Section 903B.1, the offender is required to register for life as long as the offender is not discharged from parole.<sup>41</sup>
- An offender who commits a second or subsequent offense that requires a second registration is required to register for life.<sup>42</sup>
- An offender who is convicted of an aggravated offense is required to register for life.<sup>43</sup>
- An offender who meets the definition of a "sexually violent predator" is required to register for life.<sup>44</sup>

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<sup>34</sup> Iowa Code § 692A.105.

<sup>35</sup> Iowa Code § 692A.108. See Iowa Code § 692A.101(23) for the definition of "relevant information."

<sup>36</sup> Iowa Code § 692A.108(1)(a).

<sup>37</sup> Iowa Code § 692A.108(1)(b), (c).

<sup>38</sup> Iowa Code § 692A.108(1).

<sup>39</sup> Iowa Code § 692A.106(1).

<sup>40</sup> Iowa Code § 692A.106(2).

<sup>41</sup> Iowa Code § 692A.106(2). See Iowa Code § 906.15 allowing discharge from parole for a person on lifetime parole under Iowa Code § 903B.1.

<sup>42</sup> Iowa Code § 692A.106(4).

<sup>43</sup> Iowa Code § 692A.106(4).



As of November 1, 2009, there were 1,722 offenders on the registry for life.<sup>45</sup>

## **D. Additional 10-year Registration**

If an offender commits a violation of any registry requirement, the offender is required to register for an additional 10 years commencing from the date the offender's registration would have expired.<sup>46</sup>

## **VII. Duty to Facilitate Registration**

When an offender is released from a correctional facility or jail or placed on probation, the offender is to be informed of all the registry requirements and possible penalties associated with violating the registry.<sup>47</sup> If an offender refuses to register, the offender may be held in contempt of court and may be incarcerated pursuant to the provisions of Code Chapter 665 following entry of judgment by the court.<sup>48</sup>

## **VIII. Penalties**

An offender who violates the requirements of Code Section 692A.104 (registration process), 692A.105 (additional registration requirements), 692A.108 (verification of relevant information), 692A.112 (knowingly providing false information), 692A.113 (exclusion zones and prohibited employment), 692A.114 (residency restrictions), or 692A.115 (employment where dependent adults reside), commits an aggravated misdemeanor for a first offense and a class "D" felony for a second or subsequent offense.<sup>49</sup>

In addition to any other penalty provided by law, an offender who has been convicted of an aggravated offense against a minor, a sex offense against a minor, or a sexually violent offense while in violation of certain registry requirements, commits a class "C" felony.<sup>50</sup> The court cannot defer judgment or sentence of a conviction for a violation of the Iowa Sex Offender Registry.<sup>51</sup>

## **IX. Criminal Offenses**

### **A. Knowingly Providing False Information**

An offender commits a violation of the Sex Offender Registry if the offender knowingly provides false information upon registration, when changing relevant information, or during an appearance to verify relevant information.<sup>52</sup>

<sup>44</sup> Iowa Code § 692A.106(5). See Iowa Code § 692A.101(30) for the definition of "sexually violent predator."

<sup>45</sup> Electronic mail communication from the Department of Public Safety (November 2, 2009).

<sup>46</sup> Iowa Code § 692A.106(3).

<sup>47</sup> Iowa Code § 692A.109(1).

<sup>48</sup> Iowa Code § 692A.109(2)(b).

<sup>49</sup> Iowa Code § 692A.111(1).

<sup>50</sup> Iowa Code § 692A.111(1). See Iowa Code § 692A.101(2) for the definition of "aggravated offense against a minor," Iowa Code § 692A.101(28) for the definition of "sex offense against a minor," and Iowa Code § 692A.101(29) for "sexually violent offense."

<sup>51</sup> Iowa Code § 692A.111(1). See also Iowa Code § 907.3(1)(m) and (2)(g).

<sup>52</sup> Iowa Code § 692A.112. See Iowa Code § 692A.111 for the penalties.



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## B. Exclusion Zones

### 1. Presence Upon Real Property

An offender who has been convicted of a sex offense against a minor is prohibited from being present upon the real property comprising a public or nonpublic elementary or secondary school, child care facility, or public library.<sup>53</sup> As of November 1, 2009, 4,017 offenders were subject to the exclusion zone provisions.<sup>54</sup>

An offender who has been convicted of a sex offense against a minor is also prohibited from being present on or in any vehicle or other conveyance owned, leased, or contracted by a public or nonpublic elementary or secondary school.<sup>55</sup>

### 2. Exceptions to Exclusion Zones

If an offender is enrolled in a public or nonpublic elementary or secondary school, the offender is exempt from the exclusion zone provisions relating to schools, including vehicles or other conveyances owned by the school.<sup>56</sup> An offender who is granted permission by the school administrator or the school administrator's designee may be present upon the real property comprising the school or in a vehicle or other conveyance owned by the school.<sup>57</sup> If a vehicle is simultaneously used as a mode of public transportation and used to transport children to and from school, an offender is also exempt from the exclusion zone provisions.<sup>58</sup>

An offender who has written permission from a child care facility administrator is exempt from the exclusion zone provisions relating to the child care facility, and an offender who has written permission from a library administrator is exempt from the exclusion zone provisions relating to public libraries.<sup>59</sup>

A parent or legal guardian who has committed a sex offense against a minor does not violate the exclusion zone provisions during the period of time reasonably necessary to transport the parent or legal guardian's own child to or from a place subject to the exclusion zone provisions.<sup>60</sup>

In addition, an offender who has committed a sex offense against a minor does not violate the exclusion zone provisions for the time reasonably necessary to vote in a public election if the polling location is located in a place subject to the exclusion zone provisions.<sup>61</sup>

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<sup>53</sup> Iowa Code § 692A.113(1)(a), (d), and (f). Iowa Code § 692A.101(28) defines "sex offense against a minor" to mean an offense for which a conviction has been entered for a sex offense classified as a tier I, tier II, or tier III offense under Code Chapter 692A if such offense was committed against a minor, or otherwise involves a minor. Iowa Code § 692A.101(6) defines a "child care facility" to mean a child care center, preschool, or a registered child development home. Iowa Code § 692A.101(22) defines a "public library" to mean any library that receives financial support from a city or county pursuant to Iowa Code § 256.69.

<sup>54</sup> E-mail from Karin Hamilton, Iowa DPS-DCI-SOR, to Joseph McEniry, LSA (November 2, 2009) (on file with author).

<sup>55</sup> Iowa Code § 692A.113(1)(c).

<sup>56</sup> Iowa Code § 692A.113(1)(a) and (c).

<sup>57</sup> Iowa Code § 692A.113(1)(a).

<sup>58</sup> Iowa Code § 692A.113(1)(c).

<sup>59</sup> Iowa Code § 692A.113(1)(d) and (f).

<sup>60</sup> Iowa Code § 692A.113(2)(b).

<sup>61</sup> Iowa Code § 692A.113(2)(c).





## C. Loitering

### 1. Prohibition

An offender who has been convicted of a sex offense against a minor is prohibited from loitering<sup>62</sup> within 300 feet of the real property of a public or nonpublic elementary or secondary school,<sup>63</sup> child care facility,<sup>64</sup> or public library.<sup>65</sup> The loitering prohibition also extends within 300 feet of or within the premises of any place intended primarily for the use of minors, including but not limited to a playground available to the public, a children's play area available to the public, a recreational or sports-related activity area when in use by a minor, a swimming or wading pool available to the public when in use by a minor, or a beach available to the public when in use by a minor.<sup>66</sup> An offender on the registry is also prohibited from loitering on the premises or grounds of a facility or at an event providing services or programming to dependent adults.<sup>67</sup>

### 2. Exceptions

An offender who has been convicted of a sex offense against a minor and who resides within 300 feet of the real property or boundary of a public or nonpublic elementary or secondary school, child care facility, public library, or other place intended primarily for the use of minors does not commit loitering for having a residence within 300 feet of a loitering area.<sup>68</sup> An offender is not prohibited from being present on or in any place intended primarily for the use of minors, except public or nonpublic school property, a school vehicle, child care facility, or public library, as long as the offender does not commit loitering.<sup>69</sup>

## D. Prohibited Employment

### 1. In the Presence of Dependent Adults

Any offender on the registry is prohibited from being employed at a facility providing services for dependent adults or at events where dependent adults participate in programming.<sup>70</sup>

### 2. Where Minors Are Present

An offender who has been convicted of a sex offense against a minor shall not operate, manage, be employed by, or act as a contractor or volunteer at any municipal, county, or state fair or carnival, children's arcade, certain amusement centers, or at any facility that provides programs or services primarily to minors, when

<sup>62</sup> Iowa Code § 692A.101(17) defines "loiter" to mean remaining in a public place or circulating around a place under circumstances that would warrant a reasonable person to believe that the purpose or effect of the behavior is to enable a sex offender to become familiar with a location where a potential victim may be found, or to satisfy an unlawful sexual desire, or to locate, lure, or harass a potential victim.

<sup>63</sup> Iowa Code § 692A.113(1)(b).

<sup>64</sup> Iowa Code § 692A.113(1)(e).

<sup>65</sup> Iowa Code § 692A.113(1)(g).

<sup>66</sup> Iowa Code § 692A.113(1)(h).

<sup>67</sup> Iowa Code § 692A.115.

<sup>68</sup> Iowa Code § 692A.113(2)(a). See Iowa Code § 692A.101(28) for the definition of "sex offense against a minor."

<sup>69</sup> Iowa Code § 692A.113(1) and (2).

<sup>70</sup> Iowa Code § 692A.115.



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a minor is present on the premises.<sup>71</sup> An offender convicted of a sex offense against a minor is also prohibited from operating, managing, being employed by, or acting as a contractor or volunteer at any place intended primarily for use by minors, including but not limited to a playground, children's play area, recreational or sports-related activity area, swimming or wading pool, or a beach.<sup>72</sup>

If an offender who has been convicted of a sex offense against a minor is granted permission to be present upon the real property comprising a public or nonpublic elementary or secondary school, child care facility, or public library, the offender is strictly prohibited from operating, managing, being employed by, or acting as a contractor or volunteer at any of these places subject to the exclusion zone provisions.<sup>73</sup>

### E. Residency Restrictions

#### 1. Case Law

Most litigation involving the Sex Offender Registry relates to the residency restrictions enacted during the 2002 Legislative Session.<sup>74</sup> In the latest constitutional challenge to the residency restrictions, the Iowa Supreme Court held that: (1) the statute does not violate the offender's right to interstate travel and freedom of association; (2) the statute was not unconstitutionally void for vagueness; (3) the statute was not an impermissible bill of attainder; and (4) the statute did not violate the state ex post facto clause.<sup>75</sup>

#### 2. Schools and Child Care Facilities

An offender who has been convicted of an aggravated offense against a minor is subject to residency restrictions.<sup>76</sup> As of November 1, 2009, 998 offenders were subject to the residency restrictions.<sup>77</sup> An offender subject to the residency restrictions cannot reside within 2,000 feet of the real property comprising a school or child care facility.<sup>78</sup>

The offender does not violate the residency restrictions if the offender is required to serve a sentence at a jail, prison, juvenile facility, or correctional institution; if the

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<sup>71</sup> Iowa Code § 692A.113(3)(a), (b).

<sup>72</sup> Iowa Code § 692A.113(3)(d).

<sup>73</sup> Iowa Code § 692A.113(3)(c).

<sup>74</sup> See 2002 Iowa Acts ch. 1157 (S.F. 2197). See also *Doe v. Miller*, 298 F. Supp 2nd 844 (S.D. Iowa 2004), rev'd 405 F. 3rd 700 (8th Cir. 2005) and *State v. Seering*, 701 N.W.2d 655 (Iowa 2005).

<sup>75</sup> *State v. Formaro*, 773 N.W.2d 834 (Iowa 2009). The Iowa Supreme Court noted in *Formaro* that substantial changes to the Sex Offender Registry were enacted during the pendency of the appeal but concluded that the residency restrictions were substantially readopted.

<sup>76</sup> Iowa Code § 692A.114. Iowa Code § 692A.101(2) defines "aggravated offense against a minor" to mean sexual abuse in the first, second, or third degree, except sexual abuse in the third degree violations under Iowa Code § 709.4(2)(c)(4) or more commonly referred to as "statutory rape."

<sup>77</sup> E-mail from Karin Hamilton, Iowa DPS-DCI-SOR, to Joseph McEniry, LSA (November 2, 2009) (on file with author).

<sup>78</sup> Iowa Code § 692A.114(2). Iowa Code § 692A.101(24) defines "residence" to mean each dwelling or other place where a sex offender resides, sleeps, or habitually lives, or will reside, sleep, or habitually live, including a shelter or group home. If a sex offender does not reside, sleep, or habitually live in a fixed place, "residence" means a description of the locations where the offender is stationed regularly, including any mobile or transitory living quarters. "Residence" shall be construed to refer to the place where a sex offender resides, sleeps, or habitually lives, or is stationed with regularity, regardless of whether the offender declares or characterizes such place as the residence of the offender. Iowa Code § 692A.101(13) defines "habitually lives" to mean living in a place with some regularity, and with reference to where the sex offender actually lives, which could be some place other than a mailing address or primary address but would entail a place where the sex offender lives on an intermittent basis.



offender is subject to an order of commitment as a sexually violent predator; if the offender has an established residence prior to July 1, 2002, or has an established residence prior to any newly located school or child care facility; if the offender is a minor; if the offender is a ward in a guardianship and a district judge or associate probate judge has granted an exemption from the residency restriction; or if the offender is a resident or patient at a hospice or hospital.<sup>79</sup>

## **X. Request for Determination to Register**

An offender may request the Department of Public Safety to determine whether the offense for which the offender has been convicted requires registration or whether the period of time the offender is required to register has expired.<sup>80</sup> The Department of Public Safety has 90 days from the filing of the request to determine whether the offender is required to register.<sup>81</sup>

## **XI. Department of Public Safety Duties**

The Department of Public Safety has the responsibility to maintain a central registry of information collected from sex offenders.<sup>82</sup> The department is required to adopt rules relating to the dissemination of information and a procedure for the removal of information from the registry upon the reversal or setting aside of a conviction.<sup>83</sup> The department is also required to submit Sex Offender Registry information to the Federal Bureau of Investigation for entry into the National Sex Offender Registry.<sup>84</sup>

If an offender fails to register, the department is required to make a reasonable effort to ascertain the whereabouts of the offender, and if such effort fails to locate the offender, the department is required to post an appropriate notice on the department's Internet site containing the registry and notify other law enforcement agencies as deemed appropriate.<sup>85</sup>

## **XII. Sex Offender Registry Fund**

A Sex Offender Registry Fund is established as a separate fund within the State Treasury under the control of the Department of Public Safety.<sup>86</sup> Moneys in the fund consist of funds received as a result of the imposition of a \$250 civil penalty fee assessed against each offender on the registry.<sup>87</sup> Ninety percent of the moneys collected from the civil penalty are deposited into the Sex Offender Registry Fund, and 10 percent of the moneys are deposited into the Court Technology and Modernization Fund.<sup>88</sup>

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<sup>79</sup> Iowa Code § 692A.114(3).

<sup>80</sup> Iowa Code § 692A.116(1).

<sup>81</sup> Iowa Code § 692A.116(3).

<sup>82</sup> Iowa Code § 692A.118(2).

<sup>83</sup> Iowa Code § 692A.118(4).

<sup>84</sup> Iowa Code § 692A.118(5).

<sup>85</sup> Iowa Code § 692A.118(11).

<sup>86</sup> Iowa Code § 692A.119.

<sup>87</sup> Iowa Code §§ 692A.110(2) and 692A.119. The fee was \$200 for offenders who were first required to register between July 1, 1995, and June 30, 2009.

<sup>88</sup> Iowa Code §§ 602.8108(10) and 692A.119(2).



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## **XIII. Sex Offender Registry Records**

### **A. Internet Site — Information**

The Department of Public Safety is required to maintain an Internet site for the public and others to access relevant information about sex offenders.<sup>89</sup> The Internet site is required to be searchable by name, county, zip code, and geographic radius.<sup>90</sup>

### **B. Department of Public Safety**

The Department of Public Safety is required to provide updated and corrected relevant information relating to a sex offender to a criminal and juvenile justice agency within five business days of the information being updated or corrected on the Sex Offender Registry.<sup>91</sup>

### **C. Criminal or Juvenile Justice Agency**

A criminal or juvenile justice agency may provide relevant information relating to a sex offender to the federal government, another criminal or juvenile justice agency, the general public if the information is also available through the Internet site, public and private agencies, organizations, public places, child care facilities, religious and youth organizations, neighbors, neighborhood associations, community meetings, and employers.<sup>92</sup>

### **D. Public Access Through the Internet**

The relevant information relating to a sex offender provided to the general public through the Internet site includes the following: date of birth; name, nickname, and any aliases, including ethnic or tribal names; photographs; physical description; residence; statutory citation and text of the offense committed; and specific reference indicating whether a particular offender is subject to residency restrictions or exclusion zone provisions.<sup>93</sup>

### **E. Notification of Schools**

The county sheriff of the county of the offender's new residence is required to provide relevant information about a sex offender to the administrative office of a school district if the offender moves into the school district or moves within a school district and to also provide the same relevant information to nonpublic schools in the area.<sup>94</sup>

### **F. Public Access Through the Sheriff's Office**

A member of the general public may contact the local county sheriff's office to request relevant information, including certain relevant information not posted on the Internet site, that relates to a specific offender.<sup>95</sup> If a member of the general public makes such a

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<sup>89</sup> Iowa Code § 692A.121(1).

<sup>90</sup> Iowa Code § 692A.121(1).

<sup>91</sup> Iowa Code § 692A.121(2). See Iowa Code § 692A.101(8) for the definition of "criminal or juvenile justice agency" and Iowa Code § 692A.101(23) for the definition of "relevant information."

<sup>92</sup> Iowa Code § 692A.121(3).

<sup>93</sup> Iowa Code § 692A.121(2)(b).

<sup>94</sup> Iowa Code § 692A.121(4).

<sup>95</sup> Iowa Code § 692A.121(5)(a).



specific request, the request must include at least one of the following identifiers: the date of birth of the offender, the social security number of the offender, the address of the offender, an Internet identifier of the offender, or a telephone number of the offender.<sup>96</sup> If a specific request is made with a correct identifier, the member of the general public making the request is entitled to the following additional relevant information relating to the offender: the educational institutions attended as a student, any employment information, any temporary lodging information, and vehicle information.<sup>97</sup> Upon request, a county sheriff is required to provide a member of the general public a list of all registrants in the county.<sup>98</sup>

## **G. Public Access Through the Mail**

The Department of Public Safety is required to maintain an automated mail notification system, available to any subscriber, that provides a notice of any addition or deletion from the Sex Offender Registry within a zip code or geographic radius or that is offender specific.<sup>99</sup>

## **H. Information Not Available to the Public**

The following relevant information about an offender is not subject to disclosure to the public: the identity of the victim, arrests not resulting in a conviction, passport and immigration documents, a government-issued driver's license or identification card, DNA information, fingerprints, palm prints, professional licensing information, social security number, and the offender's real name if protected under the witness protection program.<sup>100</sup>

## **XIV. Immunity**

A criminal or juvenile justice agency or an employee of such an agency is immune from liability for acts or omissions arising from a good faith effort to comply with the Sex Offender Registry provisions.<sup>101</sup>

## **XV. Electronic Monitoring**

An offender who is placed on probation, parole, or work release, special sentence, or any other type of conditional release, may be supervised by electronic tracking and monitoring.<sup>102</sup> The determination to utilize electronic tracking or monitoring is based upon a validated risk assessment approved by the Department of Corrections.<sup>103</sup> If the offender is a juvenile, the risk assessment is performed by a juvenile court officer.<sup>104</sup>

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<sup>96</sup> Iowa Code § 692A.121(5)(a).

<sup>97</sup> Iowa Code § 692A.121(5)(b).

<sup>98</sup> Iowa Code § 692A.121(6).

<sup>99</sup> Iowa Code § 692A.121(13).

<sup>100</sup> Iowa Code § 692A.121(7).

<sup>101</sup> Iowa Code § 692A.123.

<sup>102</sup> Iowa Code § 692A.124(1).

<sup>103</sup> Iowa Code § 692A.124(2).

<sup>104</sup> Iowa Code § 692A.124(3).



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### **XVI. Applicability and Retroactivity**

The new 2009 registration requirements apply to all sex offenses committed on or after July 1, 2009.<sup>105</sup> If an offender including a juvenile offender is required to be on the Sex Offender Registry as of June 30, 2009, the offender is required to be on the Sex Offender Registry under the new provisions on or after July 1, 2009.<sup>106</sup> Incarcerated offenders who committed a sex offense prior to July 1, 2009, who are required to be on the registry upon discharge from jail or prison, are also subject to the new Sex Offender Registry provisions.<sup>107</sup> Any offender serving a special sentence prior to July 1, 2009, is also subject to the new registry provisions.<sup>108</sup> In determining which tier an offender must register under, each conviction or adjudication for a sex offense requiring registration, regardless of whether such conviction occurred prior to, on, or after July 1, 2009, is included in making the determination.<sup>109</sup> Credit is to be applied for any time an offender spent on the registry prior to July 1, 2009.<sup>110</sup>

### **XVII. Sexually Motivated Offenses**

Certain offenders committing a criminal offense that does not have a sexual element may be required to register if the offense is proven to be sexually motivated.<sup>111</sup> The determination of sexual motivation is made by a judge or jury.<sup>112</sup> Under previous law, the Department of Public Safety made the determination as to whether an offense was sexually motivated, even if the criminal offense did not contain a sexual element.<sup>113</sup> If an adult or juvenile offender is convicted in another jurisdiction of an offense that is comparable to sexually motivated offenses in Code Section 692A.126, subsection 1, the Department of Public Safety has the authority to determine if the offense is sexually motivated and to place the person on the registry.<sup>114</sup> The offenses with no sexual element but which may be sexually motivated are classified under the tier classification system.<sup>115</sup>

### **XVIII. Limitations on Political Subdivisions of the State**

A political subdivision of the state is prohibited from adopting a motion, resolution, or ordinance regulating the residency location of an offender or excluding the offender from certain real property.<sup>116</sup> If a political subdivision adopts a motion, resolution, or ordinance regulating the residency location or the exclusion of an offender, any enforcement activity related to the motion, resolution, or ordinance is void and unenforceable.<sup>117</sup>

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<sup>105</sup> Iowa Code § 692A.125(1). See Iowa Code § 692A.101(27) for the definition of "sex offense."

<sup>106</sup> Iowa Code § 692A.125(2)(a).

<sup>107</sup> Iowa Code § 692A.125(2)(b).

<sup>108</sup> Iowa Code § 692A.125(2)(c).

<sup>109</sup> Iowa Code § 692A.125(3).

<sup>110</sup> Iowa Code § 692A.125(4).

<sup>111</sup> See Iowa Code § 692A.126 for the list of criminal offenses that require registration if sexual motivation is proven. The term "sexually motivated" is not defined in Code Chapter 692A.

<sup>112</sup> Iowa Code § 692A.126(1).

<sup>113</sup> Iowa Code § 692A.1(9)(d).

<sup>114</sup> Iowa Code § 692A.126(2), (3).

<sup>115</sup> Iowa Code § 692A.102.

<sup>116</sup> Iowa Code § 692A.127.

<sup>117</sup> Iowa Code § 692A.127.



## **XIX. Modification of Registration**

### **A. Under Supervision**

An offender who is on probation, parole, work release, special sentence, or on any other type of conditional release may file an application in district court seeking to modify the registration requirements.<sup>118</sup> However, an application shall not be granted unless the offender meets certain criteria. First, the date of commencement of the requirement to register must have occurred at least two years prior to the filing of the application for a tier I offender and five years prior to the filing of the application for a tier II or tier III offender.<sup>119</sup> Second, the offender must have successfully completed all required sex offender treatment programs.<sup>120</sup> Third, a risk assessment must have been completed and the offender must have been classified as a low risk to reoffend.<sup>121</sup> Fourth, the offender must not be incarcerated when the application is filed.<sup>122</sup> Fifth, the director of the judicial district department of correctional services supervising the offender, or the director's designee, must stipulate to the modification.<sup>123</sup> The application to modify shall be filed in the county of the offender's principal residence.<sup>124</sup> Notice of the application is to be provided to the county attorney of the offender's principal place of residence and to the county attorney of any other county in this state where a conviction requiring registration occurred.<sup>125</sup> An offender who is not under the supervision of a judicial district department of correctional services is not eligible to apply for modification of the registration requirements unless the offender was adjudicated in juvenile court of the sex offense that required registration.<sup>126</sup>

### **B. Adjudication in Juvenile Court**

An offender may be granted a modification if the offender is required to be on the Sex Offender Registry as a result of an adjudication of a sex offense, if the offender is not under supervision of the juvenile court or a judicial district department of correctional services, and the Department of Corrections agrees to perform a risk assessment.<sup>127</sup> The criteria for modifying the registration requirements for an offender adjudicated of a sex offense in juvenile court is the same for offenders convicted of a sex offense in adult court except the applicant is not required to obtain a stipulation from the director of a judicial district department of correctional services, or the director's designee.<sup>128</sup>

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<sup>118</sup> Iowa Code § 692A.128(1).

<sup>119</sup> Iowa Code § 692A.128(2)(a). See Iowa Code § 692A.102 for offenses classified in tiers.

<sup>120</sup> Iowa Code § 692A.128(2)(b).

<sup>121</sup> Iowa Code § 692A.128(2)(c).

<sup>122</sup> Iowa Code § 692A.128(2)(d).

<sup>123</sup> Iowa Code § 692A.128(2)(e).

<sup>124</sup> Iowa Code § 692A.128(3).

<sup>125</sup> Iowa Code § 692A.128(4).

<sup>126</sup> Iowa Code § 692A.128(1) and (6).

<sup>127</sup> Iowa Code § 692A.128(6).

<sup>128</sup> Iowa Code § 692A.128(6).



# Sex Offender Registry Law

## Appendix A — Code Section 692A.102

### 692A.102 Sex offense classifications.

1. For purposes of this chapter, all individuals required to register shall be classified as a tier I, tier II, or tier III offender. For purposes of this chapter, sex offenses are classified into the following tiers:

a. Tier I offenses include a conviction for the following sex offenses:

- (1) Sexual abuse in the second degree in violation of section 709.3, subsection 2, if committed by a person under the age of fourteen.
- (2) Sexual abuse in the third degree in violation of section 709.4, subsection 1, 3, or 4, if committed by a person under the age of fourteen.
- (3) Sexual abuse in the third degree in violation of section 709.4, subsection 2, paragraph "a" or "b", if committed by a person under the age of fourteen.
- (4) Sexual abuse in the third degree in violation of section 709.4, subsection 2, paragraph "c".
- (5) Indecent exposure in violation of section 709.9.
- (6) Harassment in violation of section 708.7, subsection 1, 2, or 3, if a determination is made that the offense was sexually motivated pursuant to section 692A.126.
- (7) Stalking in violation of section 708.11, except a violation of subsection 3, paragraph "b", subparagraph (3), if a determination is made that the offense was sexually motivated pursuant to section 692A.126.
- (8) (a) Dissemination or exhibition of obscene material to minors in violation of section 728.2 or telephone dissemination of obscene material to minors in violation of 728.15.
- (b) Rental or sale of hard-core pornography, if delivery is to a minor, in violation of section 728.4.
- (9) Admitting minors to premises where obscene material is exhibited in violation of section 728.3.
- (10) Receipt or possession of child pornography in violation of 18 U.S.C. § 2252.
- (11) Material containing child pornography in violation of 18 U.S.C. § 2252A.
- (12) Misleading domain names on the internet in violation of 18 U.S.C. § 2252B.
- (13) Misleading words or digital images on the internet in violation of section 18 U.S.C. § 2252C.
- (14) Failure to file a factual statement about an alien individual in violation of 18 U.S.C. § 2424.
- (15) Transmitting information about a minor to further criminal sexual conduct in violation of 18 U.S.C. § 2425.
- (16) Any sex offense specified in the laws of another jurisdiction or any sex offense that may be prosecuted in federal, military, or foreign court, that is comparable to an offense listed in subparagraphs (1) through (15).
- (17) Any sex offense under the prior laws of this state or another jurisdiction, or any sex offense under prior law that was prosecuted in a federal, military, or foreign court, that is comparable to an offense listed in subparagraphs (1) through (15).

b. Tier II offenses include a conviction for the following sex offenses:

- (1) Detention in brothel in violation of section 709.7.
- (2) Lascivious acts with a child in violation of section 709.8, subsection 3 or 4.
- (3) Solicitation of a minor to engage in an illegal sex act in violation of section 705.1.
- (4) Solicitation of a minor to engage in an illegal act under section 709.8, subsection 3, in violation of section 705.1.
- (5) Solicitation of a minor to engage in an illegal act under section 709.12, in violation of section 705.1.
- (6) False imprisonment of a minor in violation of section 710.7, except if committed by a parent.
- (7) Assault with intent to commit sexual abuse if no injury results in violation of section 709.11.
- (8) Invasion of privacy-nudity in violation of section 709.21.
- (9) Stalking in violation of section 708.11, subsection 3, paragraph "b", subparagraph (3), if a determination is made that the offense was sexually motivated pursuant to section 692A.126.
- (10) Indecent contact with a child in violation of section 709.12, if the child is thirteen years of age.
- (11) Lascivious conduct with a minor in violation of section 709.14.
- (12) Sexual exploitation by a counselor, therapist, or school employee in violation of section 709.15, if the victim is thirteen years of age or older.
- (13) Sexual misconduct with offenders and juveniles in violation of section 709.16, if the victim is thirteen years of age or older.
- (14) Kidnapping of a person who is not a minor in violation of section 710.2, 710.3, or 710.4, if a determination is made that the offense was sexually motivated pursuant to section 692A.126.
- (15) Solicitation of a minor to engage in an illegal act under section 725.3, subsection 2, in violation of section 705.1.
- (16) Incest committed against a dependent adult as defined in section 235B.2 in violation of section 726.2.
- (17) Incest committed against a minor in violation of section 726.2.
- (18) Sexual exploitation of a minor in violation of section 728.12, subsection 2 or 3.
- (19) Material involving the sexual exploitation of a minor in violation of 18 U.S.C. § 2252(a), except receipt or possession of child pornography.



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(20) Production of sexually explicit depictions of a minor for import into the United States in violation of 18 U.S.C. § 2260.

(21) Transportation of a minor for illegal sexual activity in violation of 18 U.S.C. § 2421.

(22) Coercion and enticement of a minor for illegal sexual activity in violation of 18 U.S.C. § 2422(a) or (b).

(23) Transportation of minors for illegal sexual activity in violation of 18 U.S.C. § 2423(a).

(24) Travel with the intent to engage in illegal sexual conduct with a minor in violation of 18 U.S.C. § 2423.

(25) Engaging in illicit sexual conduct in foreign places in violation of 18 U.S.C. § 2423(c).

(26) Video voyeurism of a minor in violation of 18 U.S.C. § 1801.

(27) Any sex offense specified in the laws of another jurisdiction or any offense that may be prosecuted in a federal, military, or foreign court, that is comparable to an offense listed in subparagraphs (1) through (26).

(28) Any sex offense under the prior laws of this state or another jurisdiction, or any sex offense under prior law that was prosecuted in a federal, military, or foreign court, that is comparable to a sex offense listed in subparagraphs (1) through (26).

c. Tier III offenses include a conviction for the following sex offenses:

(1) Murder in violation of section 707.2 or 707.3 if sexual abuse as defined in section 709.1 is committed during the commission of the offense.

(2) Murder in violation of section 707.2 or 707.3, if a determination is made that the offense was sexually motivated pursuant to section 692A.126.

(3) Voluntary manslaughter in violation of section 707.4, if a determination is made that the offense was sexually motivated pursuant to section 692A.126.

(4) Involuntary manslaughter in violation of section 707.5, if a determination is made that the offense was sexually motivated pursuant to section 692A.126.

(5) Attempt to commit murder in violation of section 707.11, if a determination is made that the offense was sexually motivated pursuant to section 692A.126.

(6) Sexual abuse in the first degree in violation of section 709.2.

(7) Sexual abuse in the second degree in violation of section 709.3, subsection 1 or 3.

(8) Sexual abuse in the second degree in violation of section 709.3, subsection 2, if committed by a person fourteen years of age or older.

(9) Sexual abuse in the third degree in violation of section 709.4, subsection 1, 3, or 4, if committed by a person fourteen years of age or older.

(10) Sexual abuse in the third degree in violation of section 709.4, subsection 2, paragraph "a" or "b", if committed by a person fourteen years of age or older.

(11) Lascivious acts with a child in violation of section 709.8, subsection 1 or 2.

(12) Kidnapping in violation of section 710.2 if sexual abuse as defined in section 709.1 is committed during the commission of the offense.

(13) Kidnapping of a minor in violation of section 710.2, 710.3, or 710.4, if a determination is made that the offense was sexually motivated pursuant to section 692A.126.

(14) Assault with intent to commit sexual abuse resulting in serious or bodily injury in violation of section 709.11.

(15) Burglary in the first degree in violation of section 713.3, subsection 1, paragraph "d".

(16) Any other burglary in the first degree offense in violation of section 713.3 that is not included in subparagraph (15), if a determination is made that the offense was sexually motivated pursuant to section 692A.126.

(17) Attempted burglary in the first degree in violation of section 713.4, if a determination is made that the offense was sexually motivated pursuant to section 692A.126.

(18) Burglary in the second degree in violation of section 713.5, if a determination is made that the offense was sexually motivated pursuant to section 692A.126.

(19) Attempted burglary in the second degree in violation of section 713.6, if a determination is made that the offense was sexually motivated pursuant to section 692A.126.

(20) Burglary in the third degree in violation of section 713.6A, if a determination is made that the offense was sexually motivated pursuant to section 692A.126.

(21) Attempted burglary in the third degree in violation of section 713.6B, if a determination is made that the offense was sexually motivated pursuant to section 692A.126.

(22) Criminal transmission of human immunodeficiency virus in violation of section 709C.1, subsection 1, paragraph "a".

(23) Human trafficking in violation of section 710A.2 if sexual abuse or assault with intent to commit sexual abuse is committed or sexual conduct or sexual contact is an element of the offense.

(24) Purchase or sale of an individual in violation of section 710.11 if a determination is made that the offense was sexually motivated pursuant to section 692A.126.

(25) Sexual exploitation of a minor in violation of section 728.12, subsection 1.

(26) Indecent contact with a child in violation of section 709.12 if the child is under thirteen years of age.

(27) Sexual exploitation by a counselor, therapist, or school employee in violation of section 709.15, if the child is under thirteen years of age.



## Sex Offender Registry Law

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- (28) Sexual misconduct with offenders and juveniles in violation of section 709.16, if the child is under thirteen years of age.
  - (29) Child stealing in violation of section 710.5, if a determination is made that the offense was sexually motivated pursuant to section 692A.126.
  - (30) Enticing away a minor in violation of section 710.10, if the violation includes an intent to commit sexual abuse, sexual exploitation, sexual contact, or sexual conduct directed towards a minor.
  - (31) Sex trafficking of children in violation of 18 U.S.C. § 1591.
  - (32) Aggravated sexual abuse in violation of 18 U.S.C. § 2241.
  - (33) Sexual abuse in violation of 18 U.S.C. § 2242.
  - (34) Sexual abuse of a minor or ward in violation of 18 U.S.C. § 2243.
  - (35) Abusive sexual contact in violation of 18 U.S.C. § 2244.
  - (36) Offenses resulting in death in violation of 18 U.S.C. § 2245.
  - (37) Sexual exploitation of children in violation of 18 U.S.C. § 2251.
  - (38) Selling or buying of children in violation of 18 U.S.C. § 2251A.
  - (39) Any sex offense specified in the laws of another jurisdiction or any sex offense that may be prosecuted in federal, military, or foreign court, that is comparable to an offense listed in subparagraphs (1) through (38).
  - (40) Any sex offense under the prior laws of this state or another jurisdiction, or any sex offense under prior law that was prosecuted in federal, military, or foreign court, that is comparable to a sex offense listed in subparagraphs (1) through (38).
- 2. A sex offender classified as a tier I offender shall be reclassified as a tier II offender, if it is determined the offender has one previous conviction for an offense classified as a tier I offense.
  - 3. A sex offender classified as a tier II offender, shall be reclassified as a tier III offender, if it is determined the offender has a previous conviction for a tier II offense or has been reclassified as a tier II offender because of a previous conviction.
  - 4. Notwithstanding the classifications of sex offenses in subsection 1, any sex offense which would qualify a sex offender as a sexually violent predator shall be classified as a tier III offense.
  - 5. An offense classified as a tier II offense if committed against a person under thirteen years of age shall be reclassified as a tier III offense.
  - 6. Convictions of more than one sex offense which require registration under this chapter but which are prosecuted within a single indictment shall be considered as a single offense for purposes of registration.

2009 Acts, ch 119, §2

NEW section